

/SG

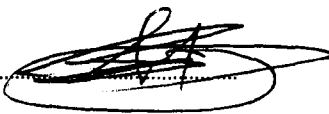
REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

DATE: 21 April 2016
CASE NO: 66598/2012

DELETE WHICHEVER IS NOT APPLICABLE	
(1)	REPORTABLE: YES /NO
(2)	OF INTEREST TO OTHERS JUDGES: YES /NO
(3)	REVISED
21/04/16	
DATE	SIGNATURE

In the matter between:

MP MMABI

FIRST PLAINTIFF

MR MATHATA

SECOND PLAINTIFF

And

MINISTER OF SAFETY AND SECURITY

DEFENDANT

JUDGMENT

SWARTZ, AJ

The first and second plaintiffs issued summons against the defendant as a result of their wrongful arrest and detention. The matter appeared before me by way of a stated case in terms of rule 33(1). The parties were *ad idem* on most issues and agreed that the arrest and detention of the first and second plaintiffs were unlawful. The issues for determination were crisp and I was only tasked with deciding the duration of the unlawful detention and the quantum of damages payable to each plaintiff, depending on the finding relating to the duration of the unlawful detention. On behalf of the first and second respondents it was contended that the period of detention was nine days. It was submitted on behalf of the defendants that the unlawful detention was for one day only.

The relevant facts are briefly as follows:

It is common cause that on 22 May 2012 the first plaintiff was arrested without a warrant at Nedbank Branch (Dendron Branch, Limpopo) on a suspicion of internet fraud and theft involving an amount of R50 000.00. The amount of R50 000.00 was paid into the bank account of the first plaintiff's company. This amount was withdrawn and R45 000.00 thereof was paid into the account of second plaintiff's company.

A second charge of theft through false pretences involving an amount of R30 000.00 emanated from a complaint in Carolina in the Free State.

On 24 May 2012 the first plaintiff was granted bail of R5 000.00 at the Dendron magistrate court.

On 2 June 2012 the second plaintiff was arrested on the same charges as the first plaintiff was facing. On 4 June 2012 the second plaintiff was joined as accused 2 and was also released on bail of R5 000.00.

On 6 June 2012 the first and second plaintiffs appeared at the Dendron magistrate court and the matter was postponed to 18 July 2012. While leaving the magistrate court and on the same day, i.e. 6 June 2012, after the postponement of the matter, the first plaintiff was arrested on a warrant issued in Piketberg. The second plaintiff was arrested without a warrant.

The next day, 7 June 2012 the first and second plaintiffs appeared before a magistrate in Polokwane where charge 1 was withdrawn against both plaintiffs. This was the charge emanating from the Piketberg complaint. It was also the charge being investigated under the Piketberg case number and in respect of which the warrant of arrest had been issued and executed. The state requested that this charge be transferred to the Northern Cape where the complainant was residing in Piketberg. The magistrate issued a warrant of removal authorising the removal of both plaintiffs to the Piketberg police cells.

On 14 June 2012 both plaintiffs appeared before a magistrate in Piketberg and charged with fraud involving R50 000.00. The matter was postponed to the next day, i.e. 15 June 2012.

On 15 June 2012 both plaintiffs pleaded guilty and were sentenced. On 18 July 2012 both plaintiffs appeared in the Dendron magistrate court to face the remaining charge 2. Charges were withdrawn against the second plaintiff. The first plaintiff pleaded guilty to the remaining charge.

At stated above, the parties are in agreement that the arrest and detention on 6 June was unlawful and wrongful. On behalf of the appellants it was contended that the wrongful detention was from 6 June 2012 up until 15 June 2012. They were arrested and detained on the same charges for which they had been released on bail initially. The bail was never withdrawn. On behalf of the defendant it was contended that the detention was unlawful until the next appearance before the magistrate the very next day, i.e. 7 June 2012. It was submitted that once the plaintiffs were brought to court pursuant to their arrest, the police's authority to detain became exhausted. The decision and authority to detain further was out of the hands of the police officials.

It is common cause that the bail on which the plaintiffs were initially released was never cancelled. It follows that they were entitled to their freedom. It is also not in dispute that factually, they were in detention until 15 June 2012 despite the fact that they were initially released on bail, which bail was never withdrawn.

Factually, they were deprived of their freedom.

I was referred to the typed transcript of the magistrate's record of proceedings at their first appearance after the arrest, on 7 June 2012. The record is incomplete as many of the magistrate's handwritten notes are described as "indecipherable". Of particular relevance are the following exchanges:

"Prosecutor: The matter is no longer in my hands. If the investigating officer for N Cape takes the two accused I am not involved.

Manthata: (the legal representative of the accused):

I request that the bail against the two accused be extended.

Court: Mr Manthata can plead with the police from N.Cape that his client be warned to appear there. Court adjourns so that defence and police can enter into discussions in this regard.

Court Resumes

Mr Manthata: we have agreed that the two accused be kept in custody.

Court: matter closed.”

Counsel for the parties who appeared before me agreed that the last comment of the plaintiffs’/accused’s legal representative be ignored, as this was apparently never said. It was submitted on behalf of the first and second plaintiffs that the police officers were anxious to take control of the plaintiffs and keep them in custody, rather than to subject them to the magistrate’s decision.

Legal Grounds:

In terms of the provisions of section 58 of the Criminal Procedure Act 56 of 1955, the effect of bail being granted is that, the accused who is in custody shall be released from custody on payment of the sum determined or the furnishing of a guarantee to pay. The release on bail shall remain, unless sooner terminated, then until a verdict is given by a court.

Minister of Safety and Security v Sekhoto and Another 2011 (5) SA 383 par 42:

“While it is clearly established that the power to arrest may be exercised only for the purpose of bringing the suspect to justice, the arrest is only one step in that process.

Once an arrest has been effected the peace officer must bring the arrestee before court as soon as reasonably possible and at least within 48 hours (depending on court hours). Once that has been done the authority to detain that is inherent in the power to arrest has been exhausted. The authority to detain the suspect further is then within the discretion of the court.”

Minister of Safety and Security v Tjokwana 2015 (1) SACR 597 (A); at paragraphs 41 to 42:

The police “... failed dismally to give a fair and honest statement of the relevant facts to the prosecutor and to bring all the relevant circumstances under the attention of (the) magistrate. On the contrary, they wilfully distorted the truth, thereby misleading the prosecutor and the magistrate with the result that the respondent was remanded in detention and refused bail, and remained in custody until his acquittal on 20 July 2009 ... it is clear that his constitutional right to freedom and security of the person, was unjustifiably and unreasonably violated by the employees of the appellant ...”

Section 12(1)(a) of the Constitution guarantees everyone the right to freedom and security of his or her person, including the right not to be deprived of his or her freedom.

In *Woji v The Minister of Police* 2015 (1) SA SACR 409 (SCA) it was held that: –

“the Constitution imposed a duty on the State and all of its organs not to perform any act that infringed the entrenched rights, such as the right to life, human dignity and freedom and security of the person – (the police) had a public law duty not to violate the applicant’s right to freedom, either by not opposing the application for bail, or by placing all relevant and readily available facts before the magistrate. A breach of this public law duty gave rise to a private law breach of the appellants’ rights not to be unlawfully detained, which could be compensated by an award of damages.

the police – ... accordingly should not have opposed Mr Wojj’s application for bail, or at least should have told the magistrate that in the case of Mr Wojj, he was not clearly depicted on the video. Inspector Kuhn clearly failed in his duty in this regard.”

As I stated above, the fact that the first and second plaintiffs’ arrest and detention on 6 June 2012 were unlawful is not in dispute. They appeared before the magistrate on 7 June 2012. Perusal of the record of proceedings as I have referred to above clearly demonstrates the exchanges between the prosecutor who states that “The matter is no longer in my hands. If the investigating

officer for N Cape takes the two accused I am not involved ...” Over and above his, the magistrate’s comments that “Mr Manthata can plead with the police from N. Cape that his clients be warned to appear there ...” and “matter closed”, to my mind, clearly demonstrates that that court was *functus officio*.

Section 50(6) of the Criminal Procedure Act 111 of 1997 reads as follows:

“(6)(a) At his or her first appearance in court a person contemplated in subsection (1) who –

(i) was arrested for allegedly committing an offence shall, subject to this subsection and section 60 –

(aa) be informed by the court of the reason for his or her further detention ...

(bb) be charged and be entitled to apply to be released on bail, and

if the accused is not so charged or informed of the reason for his or her further detention, he or she shall be released ...”

The plaintiffs should have been released from detention after their appearance on 7 June 2012. There was no justification for their further detention until 15 June 2012. The record is silent as to any further exchanges and no reasons whatsoever are provided for the further detention of the plaintiffs, which detention was unlawful in the first place. I find therefore, that the plaintiffs were held in unlawful detention for a period of nine days, that is, from 6 June 2012 until 15 June 2012.

It is trite that the determination of an award for general damages is within the discretion of the court. The court is guided by but not tied down to previous awards. Reference to such previous awards serve merely as a guideline.

The first plaintiff is 33 years old mother of three children. She holds a Diploma in Environmental Law and Management from the University of Limpopo. Since 1 September 2008 she was employed as a secretary at the Department of Community Services at Blouberg Municipality. She had no previous convictions and apparently did not receive any financial gain in the offence she was charged with. After her unlawful arrest she was held in custody, in an overcrowded cell with 21 other women in unhygienic conditions. She suffered traumatic stress as a result of the detention.

The second plaintiff is a 35 year old father of four minor children. In 2010 he was a self-employed driving school instructor. After his arrest he was equally subjected to overcrowded unhygienic prison conditions. He was handcuffed in the journey from Dendron to Piketberg. In the cells he was humiliated and threatened.

I was referred to various case law with previous awards ranging from R20 000.00 to R160 000.00 in today's monetary value.

In the particulars of claim the plaintiffs sue for payments of the sum of R150 000.00 each, which amount is fair and reasonable.

Order:

1. The defendant is ordered to pay the first plaintiff the sum of R150 000.00;
2. The defendant is ordered to pay the second plaintiff the sum of R150 000.00.
3. The defendant is ordered to pay the costs of the action.



E.L. SWARTZ

ACTING JUDGE OF THE GAUTENG DIVISION, PRETORIA

<u>Heard on:</u>	20-21 April 2016
<u>For the Plaintiffs:</u>	Mr. E. Smit
<u>Instructed by:</u>	Smit & Maree Attorneys, Polokwane
<u>For the Defendant:</u>	Adv. W. Lusenga
<u>Instructed by:</u>	State Attorney, Pretoria
<u>Date of Judgment:</u>	21 April 2016